In the High Court of Uttaranchal, at Nainital.

Civil Writ Petition No. 356 (S/B) of 2003

Dr. Brij Raj Singh ..Petitioner.

Vs

State of Uttaranchal and others .... Respondents.

Sri S.K. Mandal, learned counsel for the petitioner.
Sri R.Dobhal, learned counsel for the respondent Nos. 2 and 3.
Sr. K.P. Upadhyaya, learned Standing Counsel for the State of Uttaranchal.

Coram: Hon'ble P.C. Verma, J.

Hon'ble B.C. Kandpal, J.

Dated: 28-02-2006

By means of this writ petition the petitioner has sought the relief to issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 3-07-2003, Annexure No. 8, to the writ petition, passed by the respondent No. 3.

2- The impugned order dated 3-07-2003 reads as under:-

"Office of the Chief Personnel Officer, G.B. Pant University of Agriculture & Technology, Pant Nagar 273145, District Udham Singh Nagar.

No. PMS(A) C-V/3924 Dated: July 3, 2003.

Office Order

In pursuance of the instructions of the State Govt. vide letter No. 71/Krishi Evam Jalagam/2003 dated 26.6.2003, the appointment of Dr. Brij Raj Singh, Asstt Professor, Molecular Biology and Genetic Engineering, Department of Molecular Biology & Genetic Engineering, College of Basic Sciences and Humanities, is hereby withdrawn on the ground that he does not belong to SC category of the State of Uttaranchal. Accordingly the services of Dr. Brij Raj Singh son of Sri Puttu Lal is hereby dispensed with immediate effect.

Sd/ S.N. Maurya,

Chief Personnel Officer,

For- Vice Chancellor."

2- The petitioner was appointed as Assistant Professor Molecular Biology and Genetic Engineering, in the G.P. Pant University, Pant Nagar, District Udham Singh Nagar. The post of Assistant Professor was advertised on 20-7-2002 in the employment news, inviting applications for appointment on all India basis. The petitioner appeared in the examination and he was appointed on the post of Assistant Professor Molecular Biology and Genetic Engineering. The petitioner is a scheduled caste candidate and belongs to State of Uttar Pradesh. He is Chamar by caste. He is scheduled caste in the schedule of State of U.P. as well as State of Uttaranchal. It is evident from Part-XXIV of the Fifth Schedule appended to the Uttar Pradesh Reorganization Act, 2000, at serial No. 24 'Chamar' has been shown to be the scheduled caste. The advertisement very specifically states that the applications are invited from the deserving candidates from all over the country for the posts advertised and fee for the S.C. and S.T. candidates was prescribed only Rs. 200/- while for the general candidates it was Rs. 500/-. The relevant extract of the advertisement is reproduced as under:-

> **"G.B. Pant University of Agril. & Technology, Pant Nagar, 263145, District Udham Singh Nagar (Uttaranchal)**
>
> Employment Notice No. A-1/2002
>
> Applications are invited from the deserving candidates all over country for the following posts on the Performa given below (to be typed on A-4 size paper). For each post separate application alongwith all documents and the prescribed application fee of Rs. 500/- (Rs. 200/- for SC/ST candidates) through University Cash receipt or crossed Bank Draft drawn in favour of COMPTROLLER, G.B. PANT UNIVERSITY OF AGRICULTURE AND TECHNOLOGY payable at State Bank of India, Pantnagar (Branch Code No. 1133) should

be sent to Chief Personnel Officer (Recruitment Section) of the University latest by 19-6-2002. The application fee is not refundable in any case. Incomplete applications and applications received after due date will not be accepted. The minimum eligibility qualifications of candidate will be determined on the closing date of receipt of applications.

Pay scales: Professor: Rs. 16,400-22,400, Associate Professor: 12000-18300, Assistant Professor/Assistant Director, Physical Education/ Assistant Librarian Rs. 8000/13,500.

N.E.T. for Assistant Professor Only: Preference will be given to the candidates who have qualified NET or equivalent examinations conducted by UGC/CAR or some other Central Agency. However, in case NET qualified candidates are not available the eligibility shall be open to other candidates also.

Reservation: The vacancies are advertised under the reservation roster supplied by the Uttaranchal Govt.

For Horizontal Reservation: If no candidate is available or not found suitable against the post earmarked under the horizontal reservation, the post shall be filled through suitable candidate of the original category. However, in case the post remains vacant, it shall be readvertized with horizontal reservation, whatsoever.

Abbreviations: SC= Scheduled Castes, OBC= Other Backward Classes, NET= National Eligibility Test, UR= Unreserved……"

3- From the perusal of the above quoted advertisement, it is evident that the applications for S.C. and S.T. candidates were invited from the deserving candidates all over the country. The vacancies were advertised as per roaster supplied by the State of Uttaranchal. Meaning thereby the S.C. and S.T. candidates selected against the reserved posts were to be given posts as per roaster. Roaster is only to facilitate and implement the reservation. By virtue of the advertisement, applications from

the candidates belonging to S.C. and S.T. from all over the country were invited and it cannot be confined to State of Uttaranchal only. In the counter affidavit it has been stated that since the roaster was applicable to the State of Uttaranchal and therefore only the candidates of S.C. belonging to State of Uttaranchal were eligible to be considered for appointment and taking in view the direction of the Government, the University has passed the impugned order. The Government has not applied its mind on the language of the advertisement and directed the University to terminate the services of the petitioner vide order dated 26-6-2003, passed by the Principal Secretary, Irrigation/Commissioner without pursuing and considering the advertisement issued by the university. It is settled law that the selection and appointment shall be made strictly in accordance with the terms and conditions of the advertisement as held by the Apex Court in the matter of **N.T. Bevin Katti etc. versus Karnataka Public Service Commission and others AIR 1990 Supreme Court 1233,** the relevant portion reads as under:

> "Where advertisement is issued inviting applications for direct recruitment to category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing Rules or Government Orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and Government Orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention."

4- The impugned order suffers from illegality as the appointing authority of the petitioner is the University and the University has acted at the dictate of the State Government

which has no power to ask for cancellation of an appointment made in accordance with the advertisement. It is adhesion of power by the appointing authority and to act at the dictate of the Government without applying its mind. Such order cannot be sustained in the eyes of law.

5- For the reasons recorded above, we hold that the impugned order of termination is per se illegal and is liable to be quashed.

6- The writ petition is allowed and the impugned order dated 3-07-2003 is hereby quashed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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